

Presently, the applicant believes that the withdrawal of claims 12-20 and claim 24 from examination, even without prejudice to the reinstatement of the claims in this application or in a divisional application, would be premature. Therefore the applicant requests that this type of official withdrawal of these claims be delayed until a final action on this matter is presented.

The present remarks are addressed to the claims 1-11 and 21-23. The applicant submits that as amended the claims presently in the application are not obvious in light of the teaching of Spencer nor of Hall, or even of the reference (not prior art) which was submitted April 20, 2001 (US Pat. 6,057, 496). There is not a teaching or a suggestion in Spencer nor Hall that the herbicide would act to inhibit pollen so that a progeny formed from such treated pollen would be herbicide resistance. The only teaching of Spencer is the sensitivity to herbicide death of maize plants subjected to herbicide application at specific flowering times if the maize plants do not express the copy of the mutant EPSPS gene. The teaching of Hall is even less specific on this issue.

The present claim is amended to reflect the segregating nature of the pollen of the treated plant. Spencer does not indicate that there is any variation in the pollen. Spencer is solely indicating that two types of plants exist the non resistant plants and the resistant plants. Spencer teaches that application of the herbicide will kill the non resistant plants. This does not make it obvious that treating segregating pollen and then using such pollen in fertilization would result in progeny that are herbicide resistant.

The present invention-claims in claim 1 a method of producing herbicide resistant plants by the inhibition of pollen that lack the desired resistance by the application of the herbicide at flowering time. Spencer in contrast teaches inhibition of a whole plant. Claim 1 of the present invention is about pollen Spencer is about the total plant kill. The claims as amended are not made obvious by the art cited herein.

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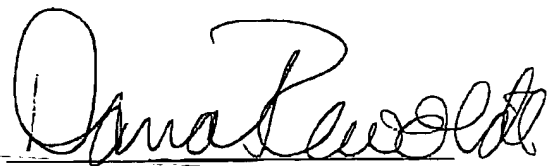
Therefore the claims as amended are believed to be in allowable form. The Applicant requests that notice of allowance be kindly reconsidered as to the amended claims.\*

The Applicant has attached the last page of US Pat. 6,057, 496 to this amendment as it is unclear whether this page was transmitted to the Patent office on April 20, 2001.

Please note that a request for a two month extension of time and payment by a credit card voucher or in the alternative a deposit withdraw were requested by fax on April 20, 2001. This response was due on April 21, 2001 which fell on a Saturday. Therefor this response is timely filed on the following Monday with the previous requested two month extension of time.

If this response is not in full compliance with the new amendments to the code the Applicant requests that the Examiner notify the Applicant as soon as possible so that compliance can be achieved in a timely manner.

Respectfully submitted,



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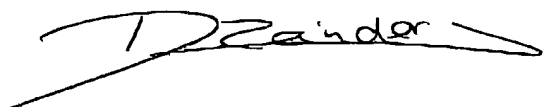
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# CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.6

I hereby certify that the attached Amendment to 09/100,516, pages of newly amended claims and the missing page of the US Pat. 6,057, 496 are being deposited with the United States Patent office by facsimile transmission to, on this 23<sup>th</sup> day of April, 2001.

Diana Reinders




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